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TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1934

No. 55

ALBERT W. HAMILTON, BY ALBERT HAMILTON, HIS GUARDIAN AD LITEM, W. ALONZO REYNOLDS, JR., BY HIS GUARDIAN AD LITEM W. ALONZO REYNOLDS, ET AL., APPELLANTS,

vs.

THE REGENTS OF THE UNIVERSITY OF CALIFORNIA, ROBERT GORDON SPROUL, AND ERNEST CARROLL MOORE.

APPEAL FROM THE SUPREME COURT OF THE STATE OF CALIFORNIA.

FILED MAY 31, 1934.

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[fol. 1] [File endorsement omitted]

IN SUPREME COURT OF CALIFORNIA

(A)

No. L. A. 14573

ALBERT W. HAMILTON, a Minor, by Albert Hamilton, His Guardian ad Litem; W. Alonzo Reynolds, Jr., a Minor, by W. Alonzo Reynolds, His Guardian ad Litem, Albert Hamilton, and W. Alonzo Reynolds, Petitioners,

vs.

THE REGENTS OF THE UNIVERSITY OF CALIFORNIA, a Corporation; Robert Gordon Sproul, as President of the University of California, and Ernest Carroll Moore, as Vice President of said University and Provost of the University of California at Los Angeles, Respondents

PETITION FOR WRIT OF MANDATE—Filed Dec. 8, 1933

To the Honorable the Supreme Court of the State of California:

Your petitioners above named respectfully apply for a writ of mandate, by this their verified petition, and in this behalf set forth the following facts and causes for the issuance of the writ, namely:

I

All of your petitioners are citizens and taxpayers of the United States and of the State of California, and residents of the County of Los Angeles, and over the age of 18 years.

Petitioner Albert Hamilton is the father and guardian ad litem of petitioner Albert W. Hamilton;

[fol. 2] Petitioner W. Alonzo Reynolds is the father and guardian ad litem of petitioner W. Alonzo Reynolds, Jr.;

Both such guardians ad litem were duly appointed as such by this court on December 7, 1933, concurrently with the filing of this petition.

II

Respondent, The Regents of the University of California, a corporation, is a corporation organized and existing under and by virtue of the Constitution and Laws of the State of California, to administer the University of California, which is a public trust;

Respondent, Robert Gordon Sproul, is President of the University of California;

Respondent, Ernest Carroll Moore is Vice President and Provost of the University of California at Los Angeles.

III

On or about October 1, 1933, petitioners Albert W. Hamilton and W. Alonzo Reynolds, Jr., were duly received, registered and entered as students of approved moral character at the University of California at Los Angeles; that each of said petitioners was thereafter continuously, until suspended, as hereinafter related, a student in good standing, with satisfactory records scholastically and in attendance and conduct, and in all other respects, with the single exception that said petitioners failed and declined to attend [fol. 3] or to take the prescribed courses in military science and tactics in the Reserve Officers Training Corps, which is an integral part of the military establishment of the government of the United States and not connected in any way with the militia or military establishment of the State of California.

The primary object of establishing units of the Reserve Officers Training Corps at the University of California is in fact and as officially announced in the University's publications, to qualify students for appointment in the Officers Reserve Corps of the United States Army. The courses in military training are those prescribed by the War Department for infantry units of the senior division of the Reserve Officers Training Corps. The Regents of the University of California require enrollment and participation in said courses of military training for at least two academic years of all able-bodied male students who are citizens of the United States. Said courses include instruction in rifle marksmanship, scouting and patrolling, drill and command, musketry, combat principles, and use of automatic rifles. Arms, equipment and uniforms for use of students

in such courses are furnished by the War Department of the United States government.

[fol. 4]

IV

All of your petitioners are and have been for a number of years active members of the Methodist Episcopal Church and of the Epworth League and other religious societies and organizations in connection therewith.

Petitioners Albert Hamilton and W. Alonzo Reynolds, the fathers, respectively of your two student petitioners, Albert W. Hamilton and W. Alonzo Reynolds, Jr., are duly ordained ministers of the Methodist Episcopal Church and have been such for many years.

The Southern California Conference of the Methodist Episcopal Church, at its 1931 session, adopted the following resolution on the subject of exemption from military service:

"With full appreciation of the heroic sacrifices of all those who have conscientiously and unselfishly served their country in times of war, but with the belief that the time has come in the unfolding light of the new day for the settlement of human conflicts by pacific means, and

"Because we as Christians owe our first and supreme allegiance to Jesus Christ.

"Because the Methodist Episcopal Church in her General Conference of 1928 has declared: 'We renounce war as an instrument of national policy.'

"Because our nation led the nations of the world in signing the Paris Peace Pact, and the Constitution of the United States, Article 6, Section 2, provides that: 'This Constitution and the laws of the United States which shall be made [fol. 5] in pursuance thereof and all treaties made under authority of the United States shall be the Supreme Law of the Land'.

"Thus making the Paris Pact the supreme law of the land which declares: 'The high contracting parties agree that the settlement of all disputes or conflict—shall never be sought except by pacific means'.

"Therefore we, the Southern California Conference, memorialize the General Conference which convenes in Atlantic City in May, 1932; to petition the United States Government to grant exemption from military service to

such citizens who are members of the Methodist Episcopal Church, as conscientiously believe that participation in war is a denial of their supreme allegiance to Jesus Christ."

Said Southern California Conference at its 1933 session adopted the following resolution on the subject:

"Reserve Officers' Training Corps

"Recalling the action of the General Conference asking for exemption from military service for those members of our church to whom war and preparation for war is a violation of conscience, we request the authorities of our State Universities at Berkeley, Los Angeles and Tucson, to exempt Methodist students from the R. O. T. C. on the grounds of conscientious objection, and we hereby pledge the moral and official backing of this Conference, seeking such exemption, provided that it be understood that no conscientious objector shall participate in the financial profits of war. The Secretary of the Conference is asked to send copies of this paragraph to the governing boards of these institutions."

And said Methodist Episcopal Church, as a part of its tenets and discipline now in full force and effect, adopted, by its General Conference of the United States in 1932, the following:

[fol. 6] "We hold that our country is benefited by having as citizens those who unswervingly follow the dictates of their consciences * * * Furthermore, we believe it to be the duty of the churches to give moral support to those individuals who hold conscientious scruples against participation in military training or military service. We petition the government of the United States to grant to members of the Methodist Episcopal Church who may be conscientious objectors to war the same exemption from military service as has long been granted to members of the Society of Friends and other similar religious organizations. Similarly we petition all educational institutions which require military training to excuse from such training any student belonging to the Methodist Episcopal Church who has conscientious scruples against it. We earnestly petition the government of the United States to

cease to support financially all military training in civil educational institutions."

As members of the Methodist Episcopal Church all of your petitioners have accepted and do accept and feel themselves morally, religiously and conscientiously bound by the tenets and discipline of said Church, as expressed in the resolutions quoted herein from the General Conference and the Southern California Conference of said Church; each of your petitioners is a follower of the teachings of Jesus Christ; each of them accepts as a guide to his life the teachings of Jesus and of the Bible and particularly in this connection petitioners allege that each of them holds, as a part of his religious and conscientious belief, that war and training for war and military training are immoral [fol. 7] and wrong *and wrong* and contrary to the letter and spirit of the teachings of Jesus and the precepts of the Christian religion.

V

Therefore, petitioners Albert W. Hamilton and W. Alonzo Reynolds, Jr., at the beginning of the Fall Term of the University in October 1933 respectfully petitioned the appropriate authorities of the University for exemption from military training and participation in the activities of the Reserve Officers Training Corps, upon the sole and exclusive ground of their religious and conscientious objection to war and to military training; said petition was denied; thereupon, through the Bishop of the Methodist Episcopal Church of California your petitioners presented to The Regents of the University of California a petition that military training at the University of California be by The Regents made optional in order that conscientious and religious objectors to war and training for war and military training might not be confronted with the necessity of violating and foreswearing their conscientious and religious beliefs or being denied the right of education in the State University to which petitioners Albert W. Hamilton and W. Alonzo Reynolds, Jr., are entitled under the constitutions and laws of the State of California and of the United States.

[fol. 8] Thereafter, and on or about October 10, 1933, respondent, The Regents of the University of California,

by resolution refused to make military training optional, and refused to exempt petitioners Albert W. Hamilton and W. Alonzo Reynolds, Jr., from compulsory military training at the University.

VI

Thereafter petitioners, Albert W. Hamilton and W. Alonzo Reynolds, Jr., declined, solely because of their religious and conscientious objections, to take the courses in military training and/or to participate in the activities of the Reserve Officers Training Corps. Upon the sole and exclusive ground of their thus declining, said petitioners were suspended and excluded from the University on or about November 17, 1933. The order of suspension as to each of your said petitioners, delivered to each of them upon the order of respondent, Dr. Ernest Carroll Moore as Vice President and Provost of the University, was and is as follows, to wit:

"You are hereby notified that you stand suspended from the University of California at Los Angeles by reason of your refusal and failure to pursue therein the course in Military Science and Tactics which is required by the Regents of the University of California to be undertaken by able bodied male and undergraduate students, citizens of the United States.

[fol. 9] "You may apply for readmission at any time, subject to the understanding that your readmission must be conditioned upon your ability and willingness to comply with all applicable regulations of the University governing the matriculation and attendance of students."

Said order of suspension has not been revoked or modified, and petitioners Albert W. Hamilton and W. Alonzo Reynolds, Jr., are now excluded from the University thereby.

VII

The University of California as a state institution affords education such as, and upon such terms as, are not to be had at any other educational institution in California, except at greater cost, which petitioners Albert W. Hamilton and W. Alonzo Reynolds, Jr., are not able to pay.

VIII

Petitioners Albert W. Hamilton and W. Alonzo Reynolds, Jr., at all times mentioned herein have been and now are ready, able and willing to take, as a substitute for military training, such other courses as may be prescribed by the University, which fact was known to respondents before the date of the order of suspension above set out.

IX

Your petitioners have no plain, speedy or adequate remedy at law. Unless prevented by the mandate of this Honorable Court the respondents will continue to exclude [fol. 10] petitioners Albert W. Hamilton and W. Alonzo Reynolds, Jr. from the University, and from the rights and educational advantages and opportunities provided by the University, in violation of their rights under the Constitutions and laws of the United States and of the State of California, as will appear more fully from the Memorandum of Points and Authorities filed herewith in support of this Petition.

X

Your petitioners are the real parties in interest herein, and the other parties interested, who will be affected by this petition, are the respondents above named, and all members of the Methodist Episcopal Church who are religious and conscientious objectors to war and military training, and all conscientious objectors to war and military training who are or may be or seek to be students of the University of California.

XI

This petition is presented originally to the Honorable the Supreme Court of California, rather than to any lower court, for the following reasons, which, in the opinion of petitioners, render it proper that the writ should issue originally from this Court:

[fol. 11] 1. That it is necessary and essential that petitioners Albert W. Hamilton and W. Alonzo Reynolds, Jr., be reinstated as students at the University without unnecessary delay in order that their education may proceed.

2. That there has been no decision by this Court or any other courts of California, so far as your petitioners have been able to learn determining whether or not members of the Methodist Episcopal Church or other students who are conscientious objectors to war and military training may be compelled to submit to military training at the expense of the sacrifice of their religious and conscientious scruples, or be denied their education at the University of California which is maintained by the people of the State for the education of its youth.

3. That repeatedly the issue has been raised at the University as to the right of conscientious and religious objectors to be exempted from compulsory military training, and such issue is likely to arise at every term or semester of the University with resulting disturbance and unrest of the University and the student body, until said issue shall have been settled by a decision of this Honorable Court; and it is therefore in the interest of the University as well as of your petitioners, that the issues [fol. 12] herein involved shall be settled promptly by this Court;

4. That the Methodist Episcopal Church, upon whose tenets and discipline your petitioners base their claims herein sued upon, numbers tens of thousands of citizens of California and many hundreds of thousands of citizens of the United States who are interested in the assertion and protection of the rights of religious and conscientious objectors to education at the hands of the State University without their having to foreswear their conscience and their deepest religious convictions;

5. That the constitutional rights which your petitioners seek to assert and vindicate by this proceeding are among the most deep-seated and vital rights guaranteed to all of the people by the Constitutions of the United States and of the State of California;

6. That the decision of any lower court than the Supreme Court of California would not be conclusive or satisfactory to any of the parties to this proceeding, and your petitioners are informed and believe and therefore allege that the losing side in any proceeding in any lower court would bring this matter to this court upon appeal, so that a decision by this court sooner or later must be had.

[fol. 13] 7. That questions of law alone are involved in this proceeding, none of the facts being in dispute, and your petitioners are advised and believe, and so allege, that there will be no requirement upon the part of either side to produce evidence before the Court, and that the issues can be submitted and determined upon the law alone.

8. That your petitioners estimate that there are several hundreds of students now in attendance at the University of California at Los Angeles who are members of families which are identified with the Methodist Episcopal Church and therefore vitally interested in the determination by this court of the matters herein involved.

Wherefore your petitioners pray that an alternative writ of mandate issue out of and under the seal of your Honorable Court directed to the respondents above named, commanding them to receive and admit into the University of California at Los Angeles as students your petitioners Albert W. Hamilton and W. Alonzo Reynolds, Jr., or to show cause before this Court at a specified time and place why said respondents have not done so, and for all other and further relief to which your petitioners may be entitled.

John Beardsley, Attorney for Petitioners.

[fol. 14] *Duly sworn to by W. Alonzo Reynolds. Jurat omitted in printing.*

[fol. 15] In Supreme Court of California

[Title omitted]

Points and Authorities in Support of Petition for Writ of Mandate

I

This petition for the reasons stated therein is appropriately brought originally to the Supreme Court of California.

Bryan v. The Regents of the University of California, 188 Cal. 559.

II

The Regents of the University of California, a corporation, is properly made a party defendant, since Section 9 of Article IX of the Constitution of California vests in that corporation "full powers of organization and government" of the University, and declares that the University "shall constitute a public trust".

III

Any resident of California, of the age of fourteen years or upwards, of approved moral character shall have the right to enter himself in the University as a student at [fol. 16] large, and receive tuition in any branch or branches of instruction at the time when the same are given in their regular courses, on such terms as the board of regents may prescribe. (Act approved March 23, 1868, Statutes of California, Seventeenth Session (1867-1868), Chapter CCXLIV). That statute in conjunction with Section 9, Article IX of the Constitution of California, would seem to establish the right of petitioners to attend the University. They were entered regularly, and their right to enter was thus recognized. Then they were suspended, solely because they declined to take the courses in military training. The question then is whether students in good standing may be dismissed from the University and denied their right to education at the hand of their state solely because they decline to forswear their consciences and violate their deepest moral and religious convictions.

IV

Those powers of the regents may not be exercised arbitrarily or unreasonably. For example, no one would contend that the regents might exclude from the University all Methodists, or Catholics, or Jews, or Quakers, or Conscientious Objectors to war and military training.

[fol. 17]

V

The Reserve Officers Training Corps at the University is an integral part of the military forces of the United States, U. S. C. A. Title 10, Army, Chapter 20, Reserve Forces; Section 381, Establishment of Reserve Officers Training Corps.

The R. O. T. C. is not in any sense a part of the military establishment of the State of California. The new Military Code of California, approved June 16, 1933, contains no mention of or reference to the R. O. T. C.

That being true, the organization's membership, control, courses of study, etc., are governed by Federal law. The Morrill Land Grant College Act (Act of Congress approved July 2, 1862) does not require that courses in military science and tactics shall be compulsorry. (Opinions of Attorney General of the United States, July 19, 1923 and June 20, 1930.) No state law (unless we consider as a law the ruling of the Regents, under their general powers under the Constitution) requires that military training shall be compulsory.

VI

Suspension of these students because of their conscientious objection to war and military training amounts to a denial of their right to the equal protection of the laws in violation of Section 1 of the Fourteenth amendment to the Constitution of the United States. Those who religious [fol. 18] and conscientious scruples permit them to drill are afforded the protection, the benefit, of the laws establishing and maintaining the University for the education of all the youth of the State.

VII

Denial of these students' right to education at the State University for their refusal to join the Reserve Officers Training Corps of the United States Army abridges their privileges and immunities as citizens of the United States, in violation of Section 1 of the Fourteenth Amendment. By Federal law they are exempted, in time of peace, from compulsory service in any branch of the Federal military establishment. That exemption, that immunity, is abridged by the rule of the Regents requiring compulsory service in the R. O. T. C.

VIII

Enforcement of compulsory military training prohibits the free exercise of religion, in violation of the First Amendment, and of the Fourteenth Amendment's provision that no state shall deprive any person of liberty without

due process of law, in that it denies petitioners the education to which they are entitled under the Constitution and laws of California, solely because of their refusal to violate their consciences and deepest moral and religious convictions.

[fol. 19]

IX

Compulsory military training, when imposed upon religious and conscientious objectors to war and military training, deprives them of their liberty without due process of law, in violation the Fifth Amendment to the Constitution of the United States.

X

Compulsory military training invades the right of freedom of religion and of conscience, in violation of Section 4, Article I of the Constitution of California.

XI

Suspension of students from the State University because their conscientious and religious scruples restrain them from joining the Reserve Officers Training Corps amounts to imposing a sectarian test as a condition to their getting an education, in violation of Section 1405, Political Code. That section provides that "No sectarian • • • test must ever be allowed or exercised in the • • • admission of students thereto, (the University) or for any purpose whatsoever. • • •"

XII

Compulsory military training violates Section 9 of Article IX of the California Constitution wherein it is provided that military tactics shall be taught at the University "in accordance with the requirements and conditions" of the Federal land grant college law.

[fol. 20] That law, as stated hereinabove, has at least twice been interpreted by the Attorney General of the United States as not imposing, as a requirement or condition, compulsory military training.

XIII

Congress, whose acts created and govern the R. O. T. C. has always respected the freedom of conscience of religious

objectors to war, and exempted them from combatant service, leaving it to the President to define non-combatant service. Considering that fact together with the fact that compulsory military training in government-aided colleges in the states is not required by Congress, we may logically conclude that it was the definite intention of Congress, in passing the Morrill Act in the midst of the Civil War, that courses in military tactics should not be compulsory.

XIV

Compulsory military training, announced by the University as being primarily for the purpose of training officers for the United States Army, violates the spirit if not the letter of the Kellogg Pact of 1926, in which treaty the United States joined more than fifty other nations in a solemn contract never to resort to other than pacific means in the settlement of international differences. We are not unmindful that the sovereign Federal government may, as [fol. 20a] all sovereigns may and many do, violate treaty obligations. But individual states of the Union may not. They, and their law-making, law-enforcing and law-interpreting agencies are bound by treaties as a part of the supreme law of the land, as they are denominated in Article VI of the Constitution.

For the foregoing reasons, it is respectfully submitted that this Court may properly take original jurisdiction of this cause, and that the alternative writ of mandate should be issued.

John Beardsley, Attorney for Petitioners.

[fol. 21] IN SUPREME COURT OF CALIFORNIA

(C)

L. A. 14573

HAMILTON

v.

REGENTS OF THE UNIVERSITY OF CALIFORNIA

ORDER DENYING PETITION FOR WRIT OF MANDATE—Dec. 11, 1933

By the Court.

The petition for a writ of mandate herein is denied.

Dated December 11, 1933. Waste, C. J.

[fol. 22] [File endorsement omitted]

IN SUPREME COURT OF CALIFORNIA

(D)

[Title omitted]

PETITION FOR REHEARING—Filed Dec. 30, 1933

To the Honorable the Supreme Court of the State of California:

By leave of the Court, petitioners present this petition for rehearing. More accurately this paper might better be entitled "Petition for Hearing", for there has been no hearing as yet. No answer, demurrer, or other pleading to the petition for mandate has been served, nor, so far as counsel is informed, filed on behalf of the respondents. At the outset, therefore, we respectfully suggest that perhaps the Court will afford us an opportunity to be heard in oral argument in open court, as is quite commonly done. Our petition was for an alternative writ of mandate. We recognize the discretion of the court to deny us that. But the law provides that the writ of mandate may be issued upon motion, and we had assumed that upon denial of the alternative writ there would be no adjudication of the case upon its merits until both sides had had opportunity to be heard. [fol. 23] Therefore, we appreciate the Court's suggestion that a petition for rehearing be filed.

This case is brought seriously, in the belief that the issues raised are vital and spring from the traditional guaranties of religious liberty and freedom of conscience contained in the Federal and State Constitutions. That those guaranties exist is denied by none. The question then is as to their applicability to the facts in this case. The authorities directly in point are few. We propose to show, however, that they are pertinent, and may not be disregarded.

Briefly, the essential facts may be summarized as follows:

Two young men, American born citizens of the United States and of California, have been suspended from the State University upon the exclusive ground of their refusal, upon religious and conscientious grounds, to participate in military training in the Reserve Officers Training Corps,

which is by order of the Regents of the University made a compulsory requirement of all male students who are citizens of the United States, for the first two years of their college course. Both these young men are sons of Methodist ministers, and their fathers join them in this proceeding for mandamus to compel reinstatement of the boys as students at the University.

[fol. 24] The General Conference of the Methodist Episcopal Church, and its Southern California Conference, have adopted, as a part of the discipline and tenets of the Church, resolutions condemning war and military training. Those paragraphs of the Church discipline are set out in our original petition, to which we refer the Court for their text.

Your petitioners, as set out in the petition for mandate, accept and feel themselves bound by the discipline of the Church; each of them is a follower of the teachings of Jesus, and feels that he owes his first and supreme allegiance to Him. Each of your student petitioners feels that he may not participate in military training without doing violence to his deepest religious and conscientious convictions.

These facts give rise to the vital question of law whether the State, acting through the Regents of the University, may compel students who are conscientious objectors to join the Reserve Officers Training Corps, a distinctly and exclusively Federal military organization, or, for their refusal so to do, deny them the education at the hands of their State University, to which they are entitled as a matter of right under the Constitutions and laws of California.

[fol. 25] In order that the issues of law may be clarified, we point out that there is not involved herein:

1. The power of the Regents to prescribe compulsory courses in physical education. The University's own publications announce that the primary object of establishing units of the R. O. T. C. at the University is to quality students for appointment in the Officers Reserve Corps of the United States Army. Physical exercise is entirely incidental.

2. The power of the state to organize and maintain its militia, with or without the requirement of compulsory service therein.

3. The power of the Regents to impose all reasonable regulations and requirements for the administration and government of the University, under the authority of Section 9 of Article IX of the Constitution of California. We shall argue, however, that that power may not be exercised arbitrarily or unreasonably.

4. The claim of aliens, seeking citizenship, to exemption from military service upon religious or conscientious grounds. That claim was denied by the U. S. Supreme Court in the Schwimmer, MacIntosh and Bland cases.

5. The power of the Federal government in time of war, or of peace, to compel all citizens to render military service.

[fol. 26] 6. The question whether or not the Morrill Land Grant College act of Congress requires the University to provide courses in military science and tactics. Undoubtedly it does. Whether that act requires that such courses shall be compulsory will be discussed; and we shall contend, upon highly respectable authority, that it does not.

The foregoing questions having been put aside as not involved herein, and as tending to confuse the real issues, let us turn to the propositions of law upon which this proceeding is founded. We shall undertake to show that the suspension of these two young men from the University solely because of their refusal, upon conscientious and religious grounds, to join the Reserve Officers Training Corps of the United States military establishment to participate in military training is violative of

(a) The Constitution and laws of the State of California;

(b) The Constitution and laws of the United States;

(c) The Paris Pact outlawing war, which is one of the treaties to which the United States is a party, and a part of the supreme law of the land.

State Questions (a)

(a) The University of California is "a public trust, to be administered by the existing corporation known as "The Regents of the University of California", with full powers of organization and government, subject only to such legislative control as may be necessary to insure compliance

[fol. 27] with the terms of the endowments of the University and the security of its funds * * *".

(Constitution of California, Article IX, Section 9.)

The "existing corporation known as The Regents * * *", was created by the Statutes of 1867-68, setting up the state university and establishing the right of students to attend. The act provides that "Any resident of California, of the age of fourteen years or upwards, of approved moral character, shall have the right to enter himself as a student at large, and receive tuition in any branch or branches of instruction at the time when the same are given in their regular courses, on such terms as the board of regents may prescribe". (Act aproved March 23, 1868, Statutes of 1867-1868, Chapter CCXLIV.)

The powers of the regents, under the Constitution and laws above quoted, of organization and control of the University certainly may not be exercised arbitrarily and unreasonably. That this is true becomes apparent immediately when we suggest the adoption of a rule by the regents that only Methodists, or negroes, or citizens born of Chinese parents might be received as students. No court would sustain such an arbitrarily and unreasonble exercise vested in the regents. The very statement of the proposition carries its own refutation.

[fol. 28] Let us then consider that grant of power to the Regents in the light of the guaranty of freedom of religion, and of conscience, in Section 4, Article I of the California Constitution. That section is as follows:

"The free exercise and enjoyment of religious profession and worship, without discrimination or preference, shall forever be guaranteed in this state; and no person shall be rendered incompetent to be a witness or juror on account of his opinions on matters of religious belief; but the liberty of conscience hereby secured shall not be so construed as to excuse acts of licentiousness, or justify practices inconsistent with the peace or safety of this state.

We submit that freedom of religion and of conscience means, perhaps first of all, the right to worship God according to the dictates of one's own conscience, which right, as we all know, has been upheld repeatedly by State and Federal Courts, high and low. Certainly that right means noth-

ing more than the right, within one's own consciousness, silently to worship in accordance with one's conscience. No law could interfere with the exercise of that right, and a constitutional guaranty of it would be idle and useless. Freedom of religion, referred to also as freedom of conscience in the California Constitution, must have a broader significance.

We are familiar with the cases that hold that the constitutional guaranty of freedom of religion does not invalidate statutes or rules of the University regents requir- [fol. 29] ing vaccination as a health measure, or laws condemning the practice of polygamy even though it is sustained by the tenets of a religious sect. Such statutes clearly are within the police power of the State. We submit, however, that it is a very different matter to nullify the principle of freedom of conscience by suspending college students, and denying them the education to which they are entitled under the law as citizens of the state, solely because of their refusal to forswear their deepest religious and conscientious convictions. Public health, morals and safety, which are the traditional concern of the police power, are not involved. If it be suggested that the public safety is to be conserved by compelling military training, we submit that the power of the state in that behalf might extend to forcing students to serve in the state militia, but not to enforcing involuntary service in the Reserve Officers Training Corps, which is a part of the Federal military establishment, and not in any way identified with the state's military service. This point will be referred to later in the discussion of the substantial Federal questions involved in this proceeding.

The right of conscientious objectors to war to exemption from military service always has been recognized in the United States. In every war acts of Congress have re- [fol. 30] spected that right. True, as a Federal matter, the right has been held to be statutory, and not constitutional, U. S. vs. MacIntosh, 283 U. S. 605, 75 L. Ed. 1302. We refer to it here as evidence that the Federal government always has acknowledged freedom of conscience as a real and fundamental right of citizens of a Democracy. The Federal Constitution does not mention "conscience" in the guaranty of religious freedom. But the California Constitution mentions freedom of conscience as synonymous, or

interchangeable, with freedom of religion. Of what avail is that guaranty, if citizens are to be denied their right to education as a penalty for their devotion to conscience and religion?

Not only the Constitution, but the statutes of California are violated by the arbitrary exclusion of the student petitioners herein from the University. Section 1405 of the Political Code forbids the allowance or exercise of any sectarian test in the admission of students. We submit that the suspension of Methodist students solely because of their refusal to renounce their Methodist faith constitutes the exercise of a sectarian test.

Similarly, compulsory military training violates Section 9 of Article IX of the California Constitution, as pointed out in paragraphs XII and XIII of our original petition herein.

[fol. 31] Federal Questions (b)

Substantial and important Federal questions are involved in this proceeding. May we respectfully express our conviction that this court is concerned with the rights of citizens of the United States guaranteed by the Constitution, the acts of Congress and the treaties of the Federal government, which constitute the supreme law of the land. And we are persuaded that it is the duty of this court to protect those rights. Therefore, we point out, as alleged in our original petition, the suspension of our student petitoners violates their constitutional rights as citizens of the United States, as set forth in Paragraphs V, VI, VII, VIII, IX and XIV of the memorandum of points and authorities filed with the original petition herein.

These Federal questions, as well as the propositions resting upon the Constitution and laws of California, we desire to argue before this Court at the hearing to which we believe the petitioners, and the great body of religious and conscientious objectors to war and military training, are entitled. We present them briefly here with the hope that the court will afford us opportunity to argue them orally in more amplified and more nearly adequate form.

[fol. 32] I

Suspension of the two student petitioners from the University exclusively because of their refusal, solely upon con-

scientious and religious grounds, to participate in military drill in the Reserve Officers Training Corps violates the guaranty of religious freedom provided in the First Amendment to the Constitution of the United States:

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof * * *

For many years, and in numerous cases, the Supreme Court of the United States adhered to an early decision that the First Amendment protected civil liberties against Congressional action only, and was not applicable to State laws. Thus in Permoli v. First Municipality, (3 How. 609), the Court said:

"The Constitution makes no provision for protecting the citizens of the respective states in their religious liberties; this is left to the State Constitutions and laws; nor is there any inhibition imposed by the Constitution of the United States in this respect on the States."

And in U. S. v. Cruikshank, (92 U. S. 542), the Supreme Court said:

[fol. 33] "This amendment was not intended to limit the powers of State governments in respect to their own citizens, but to operate upon the National Government alone. The right (to assemble and to petition) was not created by the amendment; neither was its continuance guaranteed, except as against congressional interference. For their protection in this enjoyment * * * the people must look to the States. The power for that purpose was originally placed there and has never been surrendered to the United States."

These two citations are typical of many. But their interpretation of the First Amendment no longer is the law. In Gitlow v. New York, 268 U. S. 652, 69 L. Ed. 1138, the Court assumed, but did not decide, that the liberty guaranteed by the First Amendment against Congressional restriction is a part of the liberty of which the Fourteenth Amendment provides that no state shall deprive any person without due process of law.

But a definite and positive decision to that effect came in Stromberg v. California, 283 U. S. 359, 75 L. Ed. 117,

decided in May 1931, in which the constitutionality of Section 403a of the Penal Code, California's Red Flag law [fol. 34] was attacked. The Court there held that a State law that is capable of construction as embracing conduct which the State may not constitutionally prohibit is invalid as infringing upon the constitutional right of free speech, and accordingly repugnant to the guaranty of liberty contained in the Fourteenth Amendment. It was argued there concerning freedom of speech and of the press, as it is argued here concerning freedom of religion and of conscience, that those American civil liberties are among the fundamental personal rights and "liberties" protected by the due process clause of the Fourteenth Amendment from impairment by the states. And the Supreme Court sustained that contention. In the opinion written by Mr. Chief Justice Hughes we find, at page 1123 or Vol. 75 L. Ed. this eloquent statement of the American doctrine of freedom:

"The maintenance of the opportunity for free political discussion to the end that government may be responsive to the will of the people and that changes may be made by lawful means, an opportunity essential to the security of the Republic, is a fundamental principle of our constitutional system. A statute which upon its face, and as authoritatively construed, is so vague and indefinite as to permit the punishment of the fair use of this opportunity is repugnant to the guaranty of liberty contained in the Fourteenth Amendment."

[fol. 35] And again in Near v. Minnesota, 283 U. S. 697, 75 L. Ed. 1357 at page 1363, the United States Supreme Court, again speaking through Mr. Chief Justice Hughes, said:

"It is no longer open to doubt that the liberty of the press and of speech is within the liberty safeguarded by the due process clause of the Fourteenth Amendment from invasion by state action. It was found impossible to conclude that this essential personal liberty of the citizen was left unprotected by the general guaranty of fundamental rights of person and property." (Citing cases, including Stromberg vs. California, supra.)

On the same page of the opinion the Court rests its decision partly upon a number of such cases as Adkins v. Chil-

dren's Hospital, 261 U. S. 525, 560, 561; 67 L. Ed. 785, 797, 798, in which freedom of contract is protected from statutory invasion, saying:

"* * * this Court has held that the power of the state stops short of interference with what are deemed to be certain indispensable requirements of the liberty assured, notably with respect to the fixing of prices and wages."

[fol. 36] We call attention also to this sentence in the same opinion, at pages 1363 and 1364 of 75 L. Ed.:

"* * * in passing upon constitutional questions the Court has regard to substance and not to mere matters of form, and that, in accordance with familiar principles, the statute must be tested by its operation and effect."

Applying that test to the case at bar, we submit that the suspension of our student petitioners from the University for their refusal to forswear their religious and conscientious convictions may not fairly be construed otherwise than as an unwarranted, arbitrary and unreasonable invasion of that freedom of religion guaranteed by the First Amendment. Just as Stromberg v. California, supra, extended the protection of the First Amendment to include the right of free speech to exemption from restriction by the states; and just as Near v. Minnesota, supra, likewise broadened the application of the amendment to include the protection of freedom of the press from state incursion; so, we respectfully submit, must the same protection to freedom of religion be afforded citizens of the United States against interference by the states.

[fol. 37] And of course it is the duty not only of the Federal Courts, but of this honorable Court, to protect and defend citizens of the United States in the exercise of their rights as guaranteed to them by the Constitution of the United States.

II

Suspension of your student petitioners from the University because of their refusal to renounce their deepest religious and conscientious convictions and submit to military training abridges their privileges and immunities as citizens of the United States, in violation of the Fourteenth Amendment.

At the University of California military science and tactics are taught, and military training and drill are required of students as members of the Reserve Officers Training Corps. That organization is no part of, and has no connection with, the military establishment of the State of California. The State's new Military Code, approved in June 1933, contains no mention of or reference to the R. O. T. C. If the military companies at the University were a part of the militia, our case would be entirely different. No question arises here of the power of the State to impose compulsory membership in the militia as a condition of education in the State's great University. What the State demands, under penalty of dismissal for failure to comply, is that [fol. 38] students shall become members of a distinctly Federal military unit. The R. O. T. C. is an integral part of the military forces of the United States. U. S. C. A. Title 10 Army, Chapter 20, Reserve Forces; Section 381 Establishment of Reserve Officers Training Corps. The organization's membership, control, courses of study, etc., are under the direction and control of the War Department. The commanding officers, the uniforms, weapons are supplied by the Federal Government. And as stated in the University's Bulletin for the information of students, the primary object of establishing units of the R. O. T. C. at the University is to qualify students for appointment in the Reserve Officers Corps of the United States Army. If that primary object were to train men for officers in the State Militia, our point now being made would not be well taken. For the State's militia is the State's affair. But the R. O. T. C. is a branch of the Federal military forces, established, instituted, governed by Federal statutes. We find no mention of it in any California statute.

And enforced service in any branch of the Federal military establishment in time of peace is not tolerated by Federal law. It is true that every citizen is bound to render military service to his country when called upon to do so. (Act April 22, 1898, 30 U. S. Stat. at L. 361 c. 187 etc. 1.) But, as said in 5 C. J. at page 297, citing In Re Riley, 20 F. [fol. 39] Cas. No. 11834; 1 Ben. 408, 39 How. Pr. (N. Y.) 108:

"The army is recruited in times of peace, and, except when conscription becomes necessary, in times of war also, by voluntary enlistment. The enlistment of soldiers in the

army of the United States, as an incident to the power to raise armies, is wholly within the regulation and control of Congress."

It is thus apparent that citizens of the United States are exempt from enforced military service in times of peace. In other words, one of the privileges and immunities of citizens is freedom from compulsory service in any branch of the Federal military establishment in time of peace and even in time of war except when Congress regards conscription as a necessity and enacts statutes to meet that need. Without congressional action, the government, acting through the War Department, may not abridge that immunity of its citizens. How then may the State do so without doing violence to the Constitutional guaranty against such abridgement?

It will be argued against our contentions, that the privilege of attending the University is a privilege of state residence or citizenship, rather than of citizenship of the United States, and that the State has plenary power to pre- [fol. 40] scribe, through the Regents, the terms upon which students may be admitted. But it must be kept in mind that your student petitioners were, until suspended, students of approved moral character, and in good standing in all respects with the single exception that they declined to abandon their Methodist religious faith and their consciences. That being true (and it is not denied, as none of the allegations of the petition is denied) it seems clear that their suspension solely because of their refusal to be forcibly impressed into service in a Federal military organization, into which the Federal government itself, under existing law, may not force these young men, is nothing short of an abridgement of their immunities as citizens of the United States.

We assume that it is not necessary to argue here that the language of the Fourteenth Amendment:

"No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States."

means not only that the State shall not by legislative enactment, but that it shall not, by any of its agencies, legislative, executive, administrative, or judicial, act to abridge

those immunities. Construing the equal protection clause of the Fourteenth Amendment, the Supreme Court in Ex parte Virginia, 100 U. S. 347, 25 L. Ed. 676, says:

[fol. 41] "These provisions have reference to actions of the political body denominated a state, by whatever instruments or in whatever modes that action be taken. A state acts by its legislative, its executive or its judicial authorities. It can act in no other way. The constitutional provision, therefore, must mean that no agency of the state, or of the officers or agents by whom its powers are exerted, shall deny to any person within its jurisdiction the equal protection of the laws. Whoever, by virtue of public position under a state government, deprives another of property, life or liberty, without due process of law, or denies or takes away the equal protection of the laws, violates the constitutional inhibition; and as he acts in the name and for the state, and is clothed with the state's power, his act is that of the state."

In our case the state has acted through its agents, the Regents, the President and the Provost of the University. We submit therefore, that by the action of the Provost in suspending these students for their refusal to forswear [fol. 42] their consciences and their religion, the State of California has abridged their privilege and immunity from enforced service in a branch of the Federal military establishment, in violation of the Fourteenth Amendment.

III

Suspension of these students because of their conscientious objection to war and military training amounts to denial of their right to the equal protection of the laws in violation of Section 1 of the Fourteenth Amendment to the Constitution of the United States.

Those whose religious and conscientious scruples permit them to accept enforced service in the Federal Reserve Officers Training Corps, and enforced training for war, are afforded the protection, the benefit, of the laws, establishing and governing the University for the education of all the youth of the state. Petitioners, because their devotion to conscience and their religion, are denied that benefit and protection of the laws of their State. Time and space

do not permit the argument of this point at greater length. We urge it, and rely upon it.

IV

Enforcement of compulsory military training, and suspension of these students because they respectfully decline to submit to it, prohibits the free exercise of religion, in violation of the First Amendment and of the Fourteenth [fol. 43] Amendment's provision that no state shall deprive any person of liberty without due process of law.

The suspension of these petitioners denies them the education to which they are entitled under the Constitution and laws of California, solely because of their refusal to violate their consciences and deepest moral and religious convictions. We submit that this is a denial of religious liberty—a prohibition of the free exercise of religion. That the Fourteenth Amendment extends the protection of the First Amendment to include protection against state incursion upon the liberties therein guaranteed, we have hereinabove shown, in our discussion in Paragraph I. And we have discussed the meaning of religious liberty in the paragraphs touching the guaranty of freedom of religion and of conscience under the Constitution of California. We refer the Court to those paragraphs for amplification of the thoughts expressed herein.

V

Compulsory military training, when imposed upon religious and conscientious objectors, to war and military training, deprives them of their liberty without due process of law, in violation of the Fifth Amendment to the Constitution of the United States.

[fol. 44] Time and space do not permit extended argument of this point. We urge it and rely upon it.

VI

Compulsory military training conflicts with Federal law, which is a part of the supreme law of the land.

The University of California is a Land Grant College, under the terms of the Morrill Act (Act of Congress approved July 2, 1862) by which large tracts of land were granted by the Federal Government to our State in con-

sideration of the "endowment, support and maintenance of at least one college of agriculture, where the leading objects shall be (without excluding other scientific and classical studies, and including military tactics) to teach such branches of learning as are related to scientific and practical agriculture and mechanic arts". The Morrill Act, passed in the midst of the Civil War period, does not require that courses in military tactics shall be compulsory. It has been amended several times, after discussion of the absence, in its text, of any requirement that the military courses be compulsory, and the language providing for such courses has not been changed. So that it is logical to conclude that Congress intended that military training should not be made compulsory in the Land Grant colleges. [fol. 45] In Section 9, Article IX of the California Constitution it is provided that military tactics shall be taught at the University "in accordance with the requirements and conditions" of the Morrill Act. That compulsory courses are not required by that law has twice been held by the attorneys general of the United States. (See Opinions of the Attorney General, 1923 and 1930.) So we contend that making military training compulsory is not in accordance with the requirements and conditions of the Land Grant College Act.

Further in support of that proposition, we point out Congress always has recognized and respected the rights of conscientious objectors, and has exempted them from combatant service in every war. In the world war, Congress by statute authorized the President to determine what service might be demanded of conscientious objectors, and by executive order President Wilson excused from every kind of military service those whose religious and conscientious scruples restrained them from such service. Many were interned in concentration camps, with no military duties. Many others were furloughed for work on the Country's farms. All of these facts seem to support the conclusion that Congress, in establishing the R. O. T. C., intended that membership therein should be entirely voluntary.

[fol. 46] VI (c)

Compulsory military training, announced by the University as being primarily for the purpose of training offi-

cers for the United States Army, violates the spirit if not the letter of the Kellogg Pact of 1928, a part of the supreme law of the land.

In that treaty the United States led more than fifty other nations in a solemn contract never to resort to other than pacific means in the settlement of international differences. We are not unmindful that the Federal government may, as all sovereigns may and many do, violate treaty obligations. But individual states of the Union may not. They, and their law-making, law-enforcing and law-interpreting agencies are bound by treaties as a part of the supreme law of the land, as they are denominated by Article VI of the Constitution.

For the foregoing reasons, we urge that a hearing on the merits of this case should be granted, with full opportunity to both sides to be heard in oral argument and upon briefs, and that finally this Court's peremptory writ of mandate should issue, requiring the reinstatement of your student petitioners in the University of California at Los Angeles.

Respectfully submitted, John Beardsley, Attorney for Petitioners.

Dated Los Angeles, December 29th, 1933.

[fol. 47] Affidavit of Service by Mail (1013a C. C. P.)

STATE OF CALIFORNIA,
County of Los Angeles, ss:

E. M. Mullin being first duly sworn says: that affiant is a citizen of the United States and a resident of the County of Los Angeles; that affiant is over the age of eighteen years and is not a party to the within and above entitled action; that affiant's business address is 610 Rowan Building, Los Angeles, California; that on the 30th day of December, 1933, affiant personally deposited in the United States Postoffice at Los Angeles, postage prepaid, a true and full copy of the foregoing Petition for rehearing, addressed to John U. Calkins, Jr., Esq., Attorney for the Regents of the University of California, Crocker Building, San Francisco, California.

E. M. Mullin.

Subscribed and sworn to before me this 30th day of December, 1933. Charles E. Beardsley, Notary Public in and for the County of Los Angeles, State of California. (Seal.)

Clerk's Certificate to foregoing papers omitted in printing.

[fol. 48] IN SUPREME COURT OF CALIFORNIA, IN BANK, JANUARY 8, 1934

(e)

L. A. No. 14573

ALBERT W. HAMILTON, etc., et al., Petitioners,

v.

THE REGENTS OF THE UNIVERSITY OF CALIFORNIA (a Corporation) et al., Respondents

[1] School Law—University of California—Board of Regents—Constitutional Law.—Section 9 of article IX of the Constitution reposes in the Regents of the University of California full powers of organization and government of the university, subject only to such legislative control as may be necessary to insure compliance with the terms of the endowments of the university and the security of its funds.

[2] Id.—University of California—Courses of Study—Military Tactics.—By the provisions of the organic act creating the University of California, and by section 9 of article IX of the Constitution, military tactics is expressly required to be included among the subjects which shall be taught at the university, and the regents have full power and authority, and it is their duty to prescribe the nature and extent of the course to be given, and to determine the question of what students shall be required to pursue them.

[fol. 49] [3] Id.—Miltary Tactics—Constitutional Law.—In this proceeding for a writ of mandate to compel the reinstatement of petitioners to the University of California, they having been suspended by reason of their failure and refusal to pursue therein certain compulsory courses in military training prescribed by the regents, there was involved in the cause no violation of rights assured to petitioners by the Constitution of the United States.

Application for writ of mandate prayed to be directed to the Regents of the University of California to compel the reinstatement of petitioners suspended for refusal to pursue certain compulsory courses in military training. Writ denied.

Application for rehearing (no opinion) denied.

For Petitioners—John Beardsley.

For Respondents—John U. Calkins, Jr.

OPINION ON PETITION FOR REHEARING

This court denied an application of the petitioners, Albert W. Hamilton and W. Alonzo Reynolds, Jr., for a writ of mandate to require the Regents of the University of California to readmit them to the University of California at Los Angeles as students, they having been suspended from the university by reason of their failure and refusal to pursue therein certain compulsory courses in military training prescribed by the Regents of the University of California. Petitioners have filed a petition for rehearing.

[1] The Constitution of the state of California (art. IX, sec. 9) reposes in the Regents of the University of California full powers of organization and government of the university, "subject only to such legislative control as may be necessary to insure compliance with the terms of the endowments of the University and the security of its funds".

[2] By the provisions of the organic act creating the university (Stats. 1868, p. 248, sec. 6), and by the above section of the Constitution, military tactics is expressly required to be included among the subjects which shall be taught at the university. The regents have full power and authority, and it is their duty, to prescribe the nature and extent of the courses to be given, and to determine the question of what students shall be required to pursue them.

[3] We find involved in the cause no violation of rights assured to the petitioners by the Constitution of the United States. (Pearson v. Coale et al., 167 Atl. [Md.] 54; 54 Sup. Ct. Rep. 131 [Coale v. Pearson et al.].)

The petition for rehearing does not contain facts sufficient to entitle petitioners to the relief sought.

Petition for rehearing is denied.

Waste, C. J.

We concur:
Seawell, J.; Shenk, J.; Curtis, J.; Preston, J.; Langdon, J.; Thompson, J.

[fol. 50] [File endorsement omitted]

IN SUPREME COURT OF THE UNITED STATES

(f)

[Title omitted]

Petition for Appeal, Assignment of Errors, and Prayer for Reversal—Filed May 19, 1934

PETITION FOR APPEAL

To the Honorable the Supreme Court of the United States:

Considering themselves aggrieved by the final decision of the Supreme Court of the State of California, rendered in said Court on January 8, 1934, petitioners and appellants, Albert W. Hamilton, a minor, by Albert Hamilton, his guardian ad litem, W. Alonzo Reynolds, Jr., a minor, by W. Alonzo Reynolds, his guardian ad litem, Albert Hamilton and W. Alonzo Reynolds, hereby pray that an appeal be allowed to the Supreme Court of the United States, herein, and for an order fixing the amount of the bond as security for costs thereon, and for an order approving said bond.

[fol. 51] ASSIGNMENT OF ERRORS

And the said petitioners and appellants assign the following errors in the record and proceedings in the said case:

1. The court below erred in holding that the Organic Law of the University of California (Statutes 1868, p. 248, Section 6), applied so as to authorize the suspension of petitioners and appellants herein from the University solely because they refused, upon conscientious and religious grounds, to participate in military drill in the Reserve Officers' Training Corps, does not violate their rights under the due process clause of the Fourteenth Amendment.

2. The court below erred in holding that Article IX, Section 9 of the Constitution of the State of California, applied so as to authorize the Regents of the University to suspend petitioners and appellants herein from the University solely because they refused, upon conscientious and religious grounds, to participate in military drill in the Reserve Officers' Training Corps, does not violate their rights under the due process clause of the Fourteenth Amendment.

3. The court below erred in holding that the regulations of the Regents of the University of California, applied so as to suspend petitioners and appellants herein from the University solely because they refused, upon conscientious and religious grounds, to participate in military drill in the Reserve Officers' Training Corps, does not violate their rights under the due process clause of the Fourtenth Amendment.

4. The court below erred in holding that the Organic Act of the University of California (Statutes 1868, p. 248, Section 6), applied so as to authorize the suspension of petitioners and appellants herein from the University solely because they refused, upon conscientious and religious grounds, to participate in military drill in the Reserve Officers' Training Corps, does not abridge their privileges and immunities as citizens of the United States in violation of the Fourteenth Amendment.

[fol. 52] 5. The court below erred in holding that Article IX, Section 9 of the Constitution of the State of California, construed as authorizing the Regents of the University to suspend petitioners and appellants herein from the University solely because they refused, upon conscientious and religious grounds, to participate in military drill in the Reserve Officers' Training Corps did not abridge their privileges and immunities as citizens of the United States in violation of the Fourteenth Amendment.

6. The court below erred in holding that the regulation of the Regents of the University of California applied so as to suspend petitioners and appellants herein from the University of California solely because they refused upon conscientious and religious grounds to participate in military drill in the Reserve Officers' Training Corps does not

abridge their privileges and immunities as citizens of the United States in violation of the Fourteenth Amendment.

7. The court below erred in holding that the Organic Law of the University of California (Statutes 1868, p. 248, Section 6), applied so as to authorize the suspension of petitioners and appellants herein from the University solely because they refused, upon conscientious and religious grounds, to participate in military drill in the Reserve Officers' Training Corps is not contrary to the Treaty of the United States known as the Kellogg Pact of 1928.

8. The court below erred in holding that Article IX, Section 9 of the Constitution of the State of California, applied so as to authorize the Regents of the University to suspend petitioners and appellants herein from the University solely because they refused, upon conscientious and religious grounds, to participate in military drill in the Reserve Officers' Training Corps is not violative of the Treaty of the United States known as the Kellogg Pact of 1928.

[fol. 53] 9. The court below erred in holding that the regulation of the Regents of the University of California applied so as to suspend petitioners and appellants herein from the University solely because they refused, upon conscientious and religious grounds to participate in military drill in the Reserve Officers' Training Corps is not violative of the Treaty of the United States known as the Kellogg Pact of 1928.

10. The court below erred in holding that in suspending petitioners and appellants herein from the University solely because they refused, upon conscientious and religious grounds, to participate in military drill in the Reserve Officers' Training Corps, the Regents of the University have not violated petitioners' and appellants' rights under Article VI, Clause 2 of the Constitution of the United States and under the Fourteenth Amendment thereof.

11. The court below erred in failing to hold that the Organic Law of the University of California (Statutes 1868, p. 248, Section 6), applied so as to authorize the suspension of petitioners and appellants herein from the University solely because they refused, upon conscientious and religious grounds, to participate in military drill in the

Reserve Officers' Training Corps violates their rights under the due process clause of the Fourteenth Amendment.

12. The court below erred in failing to hold that Article IX, Section 9 of the Constitution of the State of California, applied so as to authorize the Regents of the University of California to suspend petitioners and appellants herein from the University solely because they refused, upon conscientious and religious grounds, to participate in military drill in the Reserve Officers' Training Corps, violates their rights under the due process clause of the Fourteenth Amendment.

13. The court below erred in failing to hold that the regulations of the Regents of the University of California applied so as to suspend petitioners and appellants herein from the University solely because they refused, upon con- [fol. 54] scientious and religious grounds, to participate in military drill in the Reserve Officers' Training Corps, violates their rights under the due process clause of the Fourteenth Amendment.

14. The court below erred in failing to hold that the Organic Act of the University of California (Statutes 1868, p. 248, Section 6), applied so as to authorize the suspension of petitioners and appellants herein from the University solely because they refused, upon conscientious and religious grounds, to participate in military drill in the Reserve Officers' Training Corps, abridges their privileges and immunities as citizens of the United States in violation of the Fourteenth Amendment.

15. The court below erred in failing to hold that Article IX, Section 9 of the Constitution of the State of California, construed as authorizing the Regents of the University to suspend petitioners and appellants herein from the University solely because they refused, upon conscientious and religious grounds, to participate in military drill in the Reserve Officers' Training Corps, abridges their privileges and immunities as citizens of the United States in violation of the Fourteenth Amendment.

16. The court below erred in failing to hold that the regulation of the Regents of the University of California applied so as to suspend petitioners and appellants herein from the University of California solely because they

refused upon conscientious and religious grounds to participate in military drill in the Reserve Officers' Training Corps abridges, their privileges and immunities as citizens of the United States in violation of the Fourteenth Amendment.

17. The court below erred in failing to hold that the Organic Law of California (Statutes 1868, p. 248, Section 6), applied so as to authorize the suspension of petitioners and appellants herein from the University solely because they refused, upon conscientious and religious grounds, to [fol. 55] participate in military drill in the Reserve Officers' Training Corps is contrary to the Treaty of the United States known as the Kellogg Pact of 1928.

18. The court below erred in failing to hold that Article IX, Section 9 of the Regents of the University to suspend petitioners and appellants herein from the University solely because they refused, upon conscientious and religious grounds, to participate in military drill in the Reserve Officers' Training Corps, is violative of the Treaty of the United States known as the Kellogg Pact of 1928.

19. The court below erred in failing to hold that the regulation of the Regents of the University of California, applied so as to suspend petitioners and appellants herein from the University solely because they refused, upon conscientious and religious grounds, to participate in military drill in the Reserve Officers Training Corps is violative of the Treaty of the United States known as the Kellogg Pact of 1928.

20. The court below erred in failing to hold that in suspending petitioners and appellants herein from the University solely because they refused, upon conscientious and religious grounds, to participate in military drill in the Reserve Officers' Training Corps, the Regents of the University have violated petitioners' and appellants' rights under Article VI, Clause 2 of the Constitution and under the Fourteenth Amendment thereof.

21. The court below erred in refusing to grant a writ of mandate requiring the Regents to reinstate petitioners and appellants herein as students of the University of California.

[fol. 56] PRAYER FOR REVERSAL

For which errors the petitioners and appellants pray that the said judgment of the Supreme Court of the State of California, dated December 11, 1933, denying relief to the petitioners, and the decision and judgment of said Supreme Court of California, dated January 8, 1934, in the above entitled cause, denying the petition for rehearing, be reversed and a judgment rendered in favor of the said petitioners and appellants, and for costs, and for all other proper relief.

Dated April 3, 1934.

John Beardsley, Attorney for Petitioners and Appellants. Gregory Hankin, Woodward Building, Washington, D. C., of Counsel.

[fol. 57] [File endorsement omitted]

IN SUPREME COURT OF THE UNITED STATES

(g)

[Title omitted]

ORDER ALLOWING APPEAL—Filed May 19, 1934

The petitioners and appellants, Albert W. Hamilton a minor, by Albert Hamilton, his guardian ad litem, W. Alonzo Reynolds, Jr., a minor, by W. Alonzo Reynolds, his guardian ad litem, Albert Hamilton, and W. Alonzo Reynolds, in the above entitled cause, having prayed for the allowance of an appeal in this cause to the Supreme Court of the United States from the judgment made and rendered in the above entitled cause by the Supreme Court of the State of California, on December 11, 1933, and from the order and judgment made and rendered by the said Court on January 8, 1934, denying the petition of said petitioners [fol. 58] for a rehearing of said cause, and from each and every part of said judgment and order denying rehearing, and having presented and filed their petition for appeal, assignment of errors and prayer for reversal, pursuant to the statutes and the rules of the Supreme Court of the United States in such case made and provided:

It is now here ordered that an appeal be, and the same is hereby allowed to the Supreme Court of the United States from the Supreme Court of the State of California, in the above entitled cause, as provided by law, and

It is further ordered that the Clerk of said Supreme Court of the State of California shall prepare and certify a transcript of the record, proceedings, and judgment in this cause, and transmit the same to the Supreme Court of the United States, so that he shall have the same in said Court within sixty days from this date, and

It is further ordered that security for costs on appeal be fixed in the sum of $500.

Dated April 6th, 1934.

Geo. Sutherland, Justice of the Supreme Court of the United States.

Memorandum.—Whether the validity of a state statute was here drawn in question, or whether a "statute," within the meaning of 237(a) of the Judicial Code, was involved, are matters which are by no means clear on the record presented to me. The question on the merits, however, is novel and important, and the time for an appeal expires on Monday next. It seems to me best, under the circumstances, to take the responsibility of allowing the appeal, leaving myself entirely free to deal hereafter with the questions as a member of the court as I may be advised upon further consideration.

[fols. 59-61] Bond on appeal for $500.00, approved and filed May 19, 1934, omitted in printing.

[fol. 61a] Citation in usual form showing service on John U. Calkins, Jr., filed May 19, 1934, omitted in printing.

[fol. 62] IN SUPREME COURT OF CALIFORNIA

(j)

[Title omitted]

STIPULATION AS TO TRANSCRIPT OF RECORD—Filed May 19, 1934

It is hereby stipulated by and between the attorneys for the parties in the above entitled cause that the papers to be

presented to the Supreme Court of the United States by the Clerk of the Supreme Court of California pursuant to an order of the Honorable George Sutherland, Associate Justice of the Supreme Court of the United States, dated and issued on April 6, 1934, are the following, and that this stipulation shall take the place of the præcipe required to be filed by counsel for the respective parties under and pursuant to Rule Ten of the Rules of the Supreme Court of the United States.

(a) Petition for writ of mandate;
(b) Memorandum of points and authorities filed with the petition for writ of mandate;
(c) Order of the Supreme Court of California of December 11, 1933, denying petition for writ of mandate;
(d) Petition for rehearing;
[fols. 63-83] (e) Order denying petition for rehearing, and opinion of the Court thereon;
(f) Petition for leave to appeal, together with assignment of errors and prayer for reversal;
(g) Order allowing appeal;
(h) Bond for costs on appeal;
(i) Citation, with acknowledgment of service;
(j) The present stipulation;
(k) Acknowledgment of service;
(l) Statement as to jurisdiction.

It is further stipulated that the papers annexed hereto are true and correct copies of the papers described in paragraphs (a) to (l) inclusive of this stipulation; that with this stipulation they constitute the complete transcript of the record to be certified to the Supreme Court of the United States at Washington, and that the Clerk of the Supreme Court of California may certify this transcript of record and other papers without further formality.

John Beardsley, Attorney for Appellants. John U. Calkins, Jr., Attorney for Appellees.

[File endorsement omitted.]

[fol. 84] Clerk's Certificate to foregoing transcript omitted in printing.

[fol. 85] IN SUPREME COURT OF THE UNITED STATES

STATEMENT OF POINTS TO BE RELIED UPON AND DESIGNATION OF THE PARTS OF THE RECORD TO BE PRINTED—Filed May 23, 1934

Come now the appellants in the above entitled cause and adopt their assignments of error as their statement of the points to be relied upon in the argument in this Court.

Appellants further represent that the whole record, as filed, is necessary for the consideration of the case.

Gregory Hankin, Counsel for Appellants.

Dated May 23, 1934.

[fol. 86] [File endorsement omitted.]

Endorsed on cover: File No. 38,679. California Supreme Court. Term No. 55. Albert W. Hamilton, by Albert Hamilton, His Guardian ad litem, W. Alonzo Reynolds, Jr., by his Guardian ad litem W. Alonzo Reynolds, et al., Appellants, vs. The Regents of the University of California, Robert Gordon Sproul and Ernest Carroll Moore. Filed May 21, 1934. File No. 38,679. 55, O. T. 1934.